IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3214 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KIRANKUMAR PRANVALLABHDAS GANDHI

Versus

DAHYABHAI MOTIBHAI PATEL

Appearance:

MR VIJAY H PATEL for Petitioner

NOTICE SERVED for Respondent No. 1

MR RC KODEKAR for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/02/2001

ORAL JUDGEMENT

Present petitioner-original accused No.2 of Criminal Inquiry Case No.27 of 1993 has filed the present Misc. Cri. Application under Sec.482 of Cr.P.C. praying to quash the complaint being Criminal Case No.27 of 1993 registered before learned Judicial Magistrate (First Class) Modasa Camp at Bayad against him.

2. According to petitioner, he and other accused

were having a shop in the name and style of M/s Mukesh Brothers in Bayad Marketing yard and they were carrying on the business of selling and purchasing of grains and oilseeds. On 25-8-1992, the complainant had sold 63 quintal millete @ Rs.65/- per 20 bags in 63 bags to the accused firm which comes to Rs.20,270/- and proper receipts were issued for the same. The complainant thereafter asked for the payment, but same was not paid and hence, a complaint was filed by the complainant directly before the learned Judicial Magistrate (First Class) Court at Modasa against the present petitioner and other accused under Sec.406 and 420 of the Indian Penal Code stating that they had committed breach of trust and cheating. Said complaint has been registered as Criminal Inquiry Case No.24 of 1993 on 15-5-1993. Learned Magistrate passed an order under Sec.156(3) of Cr.P.C. directing the PSI of Bayad Police Station to enquire and submit the report to the Court within a period of 30 days. On receipt of the said complaint, I.O. started investigation. During that period, present petitioner has filed this petition praying for quashing of the complaint in question.

3. Heard learned advocate for the petitioner, Mr.V.H.Paten and learned APP for the respondent No.2-State, Mr.R.C.Kodekar. Respondent No.1 though served chosen not to remain present either personally or through advocate.

4. The petitioner has come out with the case that he has nothing to do with the firm namely M/s Mukesh Brothers. According to him, he is not a partner in the alleged firm. To support his say, he has drawn my attention towards Annexure-B annexed with this petition which prima-facie establishes that the present petitioner was not a partner in the firm in question against whom present respondent No.1 has filed the complaint for misappropriation and cheating. Though the complainant was duly served, he has chosen not to remain present either personally or through advocate. He has not filed anything in writing controverting the facts which has been narrated by the petitioner-original accused on oath and the documentary evidence which have been produced by the petitioner in this petition.

5. It is prima-facie established that the petitioner was not a partner of the firm in question at the relevant time. The complaint nowhere states that he has held the goods of the respondent No.1 or he has tried to represent himself before the complainant as a partner of the firm. In view of the above facts and circumstances, it has been established that the petitioner has nothing to do with

the firm in question and hence, the complaint qua the present petitioner is required to be quashed.

6. In view of the aforesaid discussion, the complaint being Criminal Case No.27 of 1993 registered before learned Judicial Magistrate (First Class), Modasa, Camp at Bayad is hereby quashed qua the petitioner. Rule is made absolute accordingly.

(R.P.DHOLAKIA,J.)
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